

individuals seeking to obtain a decal for their manufactured homes, in direct contravention of this Court's TRO. For at least three business days, these offices have failed to comply with the Court's TRO and have blocked individuals seeking to renew their manufactured home decals. Despite having been notified repeatedly of these problems by Plaintiffs' counsel, Defendant Magee has refused to take simple actions necessary to ensure compliance with the TRO or to investigate these violations. The remedies sought by this motion will ensure that individuals wrongly denied the opportunity to purchase decals in violation of this Court's TRO are provided an opportunity to purchase them and thus continue living in their manufactured homes. In further support of this Motion, Plaintiffs state as follows:

1. On November 18, 2011, Plaintiffs filed their Complaint and a Motion for Temporary Restraining Order and Preliminary Injunction. (Rec. Docs. 1, 13.) In support of their Motion, Plaintiffs argued that they had demonstrated a substantial likelihood of success on the merits of their claims that Defendants' application of Section 30 of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (hereinafter "HB 56")¹ to Alabama's manufactured home registration scheme, 1975 Ala. Code § 40-12-255, violates the Supremacy Clause of the U.S. Constitution and the federal Fai

1975 Ala. Code § 40-12-255, to prove his or her U.S. citizenship or lawful immigration status;” (2) enjoins Defendants “and all those acting in concert with them . . . from refusing to issue the manufactured home decal required by 1975 Ala. Code § 40-12-255 to any person because that person cannot prove his or her U.S. citizenship or lawful immigration status;” and (3) directs “Defendant Magee . . . to immediately notify all county officials who are responsible for enforcing the manufactured home registration requirements of 1975 Ala. Code § 40-12-255 of this temporary restraining order.” (*Id.* at 9-10.) The TRO is currently in effect, through 4:30 p.m. on December 7, 2011. (*Id.* at 10.)

3. On November 25, 2011,² Defendant Magee sent a memorandum dated November 24, 2011, to the President of the Probate Judges Association, the President of the Licensing Commissioners Association, and a former State Revenue Commissioner, informing them of the Court’s TRO. (Rec. Docs. 56, 56-1.) On November 28, 2011, Defendant Magee emailed and/or faxed the November 25, 2011 memorandum and the TRO to unnamed county officials. (*Id.*) The memorandum instructs the county officials that they are “enjoined from requiring any person who attempts to pay the annual registration fee . . . to prove his or her U.S. citizenship or lawful immigration status” and are “further enjoined from refusing to issue the manufactured home decal . . . to any person because that person cannot prove his or her U.S. citizenship or lawful immigration status.” (Rec. Doc. 56-1.)

4. On November 28, 2011, Defendant Magee issued a second memorandum to county probate judges, revenue commissioners, tax assessors, tax collectors, license commissioners, licensing officials, licensing inspectors, and directors of revenue. (Rec. Doc. 57-1) (hereinafter “Magee Mem.”). The Magee Memorandum envisions the following scheme for

² The memorandum is dated November 24, 2011 (Rec. Doc. 56-1), but the Notice of Compliance states that it was disseminated on November 25, 2011. (Rec. Doc. 56, ¶ 1.)

enforcement of Section 30 of HB 56, which prohibits any “business transactions” between a state or a political subdivision and those who cannot prove their citizenship or lawful immigration status: First, an agency will ask if the person has an Alabama driver’s license or non-driver identification card; if the applicant does, the validity of the license will be verified through the AL-Verify Program in order to ascertain that the person is either a U.S. citizen or a lawfully present immigrant. (*Id.* at 1.³) Second, if a valid state license is not presented, the applicant will be asked if she is a U.S. citizen; if she answers affirmatively, an identity document from the list set forth in Section 29(k) of HB 56 will be demanded. (*Id.* at 1-2.) Third, if the applicant states that she is not a U.S. citizen, she will be asked if she is lawfully present. (*Id.* at 2.) If she answers affirmatively, her status is to be verified through SAVE or 8 U.S.C. § 1373(c). (*Id.* at 2.) The Magee Memorandum is silent on what to do if the applicant declines to answer, or answers in the negative. However, it notes that:

An alien may be denied the right to proceed with a business transaction with the State or a political subdivision only on the basis of a federal determination that the alien is unlawfully present. If you are unable to verify that an alien is unlawfully present in the United States through a determination by the SAVE Program or by other verification with the United States Department of Homeland Security, then you should allow the alien to conduct the requested business transaction with your office.

³ The Magee Memorandum incorrectly states that a valid state identification will permit confirmation of “lawful status as a *citizen*” through AL-Verify. (*Id.* at 1, emphasis added). This is factually incorrect. AL-Verify provides confirmation that a license is valid; it does not provide any information that would enable an official to determine whether the license holder is a U.S. citizen or lawfully present alien. See AL-Verify, *Alabama ID Verification* (“ALVerify provides the ability to verify an Alabama driver license or non-driver identification card for the purpose of demonstrating U.S. citizenship and/or lawful presence in the U.S.”), available at <https://alverify.mvtrip.alabama.gov/> (accessed on Nov. 29, 2011); see also Mathew Hudnall,

(*Id.* at 3.) The Magee Memorandum concludes that for the time period during which this Court’s TRO is in effect, county officials “may not seek to verify the citizenship or immigration status of applicants for manufactured home registration” and may not deny a decal on grounds that the

7. At approximately 6:00 PM on November 28, Mr. Brooke sent Mr. Payne a second email informing Mr. Payne that the Chilton County tax collector's office was also continuing to demand proof of citizenship or lawful immigration status. *See id.* at 3-4.

8. At approximately 9:44 AM the next day, November 29, Mr. Payne emailed Mr. Brooke in response: "Dear Sam, It is my understanding that all of the referenced offices have received Commissioner Magee's November 24 Memo." *Id.* at 3.

9. At approximately 10:21 AM, Mr. Brooke emailed Mr. Payne again, asking that Mr. Payne inform him when and how the offices received the November 24 memo and whether the offices were now in compliance with the TRO. Mr. Brooke also stated that given the impending expiration of the decal renewal deadline, Plaintiffs would move to enforce if these issues were not resolved promptly. *Id.* at 3.

10. Mr. Payne responded at approximately 11:06 AM: "Dear Sam, We filed the Notice of Compliance yesterday. If you provide specific allegations, I will do my best to address them." *Id.* at 2.

11. At approximately 3:01 PM, Mr. Brooke emailed Mr. Payne, again setting out in specific detail the problems encountered at the various county offices. Mr. Brooke requested that Mr. Payne confirm that the violating offices had been specifically contacted to ensure their future compliance with the TRO. Mr. Brooke advised that Plaintiffs were prepared to file a motion to enforce the terms of the TRO if they were not provided with a satisfactory response by noon on November 30. *See id.* at 1-2.

12. At approximately 4:33 PM, Mr. Payne responded, "Dear Sam, As I did earlier, I am representing to you that the referenced offices (I see you added Morgan County, and this

17. As demonstrated by the correspondence between Mssrs. Payne and Brooke, Plaintiffs have attempted to resolve this dispute for two days without resorting to Court intervention and have been unable to convince Defendant Magee to take any action, beyond the issuance of the two ineffective memoranda, to ensure compliance with the Court's TRO.

18. During this three-day period, individuals in at least six counties have been unable to renew their manufactured home decals and will now face penalties, fines, and possible criminal sanctions if they are unable to renew their decals by today, the statutory deadline for renewal. *See* 1975 Al. Code §§ 40-12-255(a) and (l). This is the precise irreparable harm that the Court sought to prevent by entering the TRO. Given that individuals in the state had only four business days to renew their manufactured home decals before the deadline after the TRO issued, two days of non-compliance is a significant harm.

19. As such, Plaintiffs respectfully request that this court enjoin Defendant Magee, and those acting in concert with her in administering the manufactured home decal registration scheme set forth in 1975 Ala. Code § 40-12-255 from enforcing or attempting to enforce any fines, criminal charges, or any other penalties set forth in 1975 Al. Code §§ 40-12-255(a) and (l) or otherwise against individuals who seek renewal of their manufactured home decals up through and including December 5, 2011. This is the only remedy available that will ensure that individuals wrongly denied the opportunity to purchase decals will be able to secure the protections of the TRO and thus be able to continue living in their mobile homes.

20. Commissioner Magee has the power to stay enforcement until December 5, 2011, and has extended registration deadlines in the past because of the immigration law. For example, business licenses are to be renewed annually by October 31. Commissioner Magee extended this deadline from October 31 to November 30 “due to the hardship placed on Alabama businesses’

that could not obtain or renew their licenses in October ‘due to technical difficulties’ with implementing the immigration law.”⁴

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) Direct Defendant Magee, personally or through counsel, to immediately contact the individuals in charge of the relevant tax collection and probate offices in Morgan, Etowah, Chilton, Houston, Shelby, and Jefferson Counties and to secure their written acknowledgment that they have been instructed regarding the content, mandates, and requirements of this Court’s TRO, and that they have instructed their staff regarding the same;

(b) Order that Defendant Magee submit to this Court a notice of compliance reporting her efforts to instruct these offices and appending the written acknowledgements described in subsection (a) within 24 hours of this Court’s order enforcing the TRO;

(c) Further enjoin Defendant Magee and those who act in concert with her or on her behalf in administering the manufactured home decal registration scheme set forth in 1975 Ala. Code § 40-12-255 from enforcing or attempting to enforce any fines, criminal charges, or any other penalties set forth in 1975 Al. Code §§ 40-12-255(a) and (l) or otherwise against individuals who seek renewal of their manufactured home decals up through and including December 5, 2011;

(d) Order that, in the event of future reports of noncompliance by Plaintiffs’ counsel or any other source, Defendant Magee, personally or through counsel, immediately contact the individuals in charge of the relevant tax collection and probate offices that are allegedly out of

⁴ Associated Press, *Business license deadline delayed due to immigration law*, Montgomery Advertiser (Nov. 4, 2011), available at <http://www.montgomeryadvertiser.com/article/20111104/NEWS/111104011/Business-license-deadline-delayed-due-immigration-law>.

compliance and secure their written acknowledgment that they have been instructed regarding the content, mandates, and requirements of this Court's TRO, and that they have instructed their staff regarding the same.

For the Court's convenience, a proposed order is submitted with this Motion.

Dated: November 30, 2011

Respectfully submitted,

/s/ Samuel Brooke
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⁺ *Admitted Pro Hac Vice*

Counsel for Plaintiffs

CERTIFICATE OF SERVICE
MIDDLE DISTRICT OF ALABAMA

I hereby certify that on this 30th day of November, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel who are registered for electronic service in this case.

I further certify that on this 30th day of November, 2011, I will serve by electronic mail (E-MAIL) the following Defendant for whom no counsel has yet appeared: Judge Jimmy Stubbs, at the e-mail address probatejudge@elmoreco.org.

s/ Samuel Brooke
Samuel Brooke